

AMENDED IN ASSEMBLY APRIL 25, 2005

AMENDED IN ASSEMBLY APRIL 19, 2005

AMENDED IN ASSEMBLY MARCH 17, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 310

Introduced by Assembly Member Umberg

February 10, 2005

An act to add ~~Sections 1714.12 and 1714.13 to the Civil Code Chapter 11 (commencing with Section 19999.8) to Part 2.6 of Division 5 of Title 2 of the Government Code~~, relating to investments.

LEGISLATIVE COUNSEL'S DIGEST

AB 310, as amended, Umberg. Investment plans: defined contribution and other retirement plans: liability.

Existing law provides for the licensing and regulation of broker-dealers and investment advisers by the Department of Corporations under the Corporate Securities Law of 1968. *Existing law requires the Department of Personnel Administration to establish a 2-tiered retirement system, provide an alternate retirement system for new employees, and administer a retirement system for employees excluded from the Public Employees Retirement System.*

This bill would impose various ~~qualifications~~ fees and requirements on persons performing investment or management services in connection with a *mandatory* defined contribution plan or other *mandatory* retirement plan *established for state and local employees*, including a requirement to ~~be registered with the state~~, among others, *offer certain investments, limit fees to 1.25% of total investments, and be insured*. The bill would provide that those persons owe a fiduciary

duty to the plan beneficiaries, and would set forth the liability of those and other associated persons for a breach of that duty. The bill would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) As part of their compensation and employee benefits, state
4 and local public employees are entitled to adequate, stable, and
5 secure retirement benefits. This right includes the right to
6 protection from the loss of retirement funds due to incompetent
7 investment advice or improper accounting of retirement funds.
8 Indeed, all California employees and retirees in both the private
9 and public sectors are entitled to minimum safeguards with
10 respect to their retirement investments.

11 (b) A defined contribution plan does not provide a guaranteed
12 benefit level at retirement and does not include disability or death
13 benefits. The balance in a defined contribution account may be
14 paid out as either a lump sum or a partial lump sum, in a set
15 number of installment payments, or it may be used to purchase
16 an annuity.

17 (c) Under a defined contribution plan, the employer is only
18 responsible for making the scheduled contributions, while the
19 employees bear all the investment risk.

20 ~~SEC. 2. Section 1714.12 is added to the Civil Code, to read:~~

21 ~~1714.12. (a) In order to be eligible to perform investment or~~
22 ~~management services in connection with a defined contribution~~
23 ~~plan or other retirement plan, a person shall be registered with~~
24 ~~the Commissioner of Corporations or another agency of the State~~
25 ~~of California and satisfy all of the following conditions:~~

26 ~~(1) Have and maintain a minimum of 10 or more consecutive~~
27 ~~quarters of positive returns.~~

28 ~~(2) Limit its management and service fees for employee~~
29 ~~retirement plans to one-half percent of total investments.~~

30 ~~(3) Provide monthly statements itemizing all fees charged to~~
31 ~~an employee retirement account.~~

1 ~~(4) Purchase insurance to cover any and all potential liability~~
2 ~~occurring by reason of any act or omission in rendering services~~
3 ~~in connection with a defined contribution plan or other retirement~~
4 ~~plan.~~

5 ~~(5) Eliminate all fees for the opening of new defined~~
6 ~~contribution plan accounts or other new retirement plan accounts,~~
7 ~~for transferring defined contribution plan accounts or other~~
8 ~~retirement plan accounts, or for closing any of those accounts.~~

9 ~~(6) Offer an education program to all customers with defined~~
10 ~~contribution plan accounts or other retirement plan accounts.~~

11 ~~(b) All persons qualified to provide investment or management~~
12 ~~services as defined under this section shall provide evidence of~~
13 ~~financial strength and stability, as may be applicable, pursuant to~~
14 ~~the rating assigned by nationally recognized rating services that~~
15 ~~evaluate the financial strength of those providers of investment or~~
16 ~~management services.~~

17 ~~(c) All investments made in a defined contribution plan or~~
18 ~~other retirement plan shall be rated as AAA, AA, A, BBB, or~~
19 ~~“investment grade” by either Fitch, Moody’s, or Standard &~~
20 ~~Poor’s rating services or a similar statistical rating service that is~~
21 ~~nationally recognized for rating the creditworthiness of~~
22 ~~investments.~~

23 ~~(d) All persons qualified to provide investment or management~~
24 ~~services as defined under this section shall offer investment~~
25 ~~education services at their own expense to all customers with a~~
26 ~~defined contribution plan account or other retirement plan~~
27 ~~account. Investment education services shall include, but are not~~
28 ~~limited to, disseminating educational materials, providing~~
29 ~~retirement planning education, explaining the differences~~
30 ~~between the defined benefit retirement plan and the defined~~
31 ~~contribution retirement plan, and offering financial planning~~
32 ~~guidance on matters such as investment diversification,~~
33 ~~investment risks, investment costs, and asset allocation.~~

34 ~~(e) All persons qualified to provide investment or management~~
35 ~~services as defined under this section shall provide written~~
36 ~~disclosure of expenses paid directly or indirectly by customers~~
37 ~~with a defined contribution or other retirement plan, including,~~
38 ~~but not limited to, penalties for early withdrawals, presence of~~
39 ~~two-tier annuity features, declining or fixed withdrawal charges,~~
40 ~~and surrender or deposit charges, to those customers.~~

~~(f) All persons qualified to provide investment or management services as defined under this section shall provide disclosure of the range of administrative and customer services provided, including, but not limited to, asset allocation, accounting and administration of benefits for individual participants, recordkeeping for individual participants, asset purchase, control, and safekeeping, execution of a participant's instructions as to asset and contribution allocation, calculation of daily net asset values, direct access for participants to their account information, periodic reporting to participants, not less than quarterly, on their account balances and transactions, and compliance with the standard of care applicable in the provision of investment services and consistent with federal law, to customers with a defined contribution or other retirement plan.~~

~~SEC. 3. Section 1714.13 is added to the Civil Code, to read:~~

~~1714.13. (a) Any person, including a broker-dealer, as defined in Section 25004 of the Corporations Code, or an investment adviser, as defined in Section 25009 of the Corporations Code, who performs services in connection with a defined contribution plan or other contribution plan owes fiduciary duties to the plan beneficiary.~~

~~(b) Any person who breaches his, her, or its fiduciary duty in connection with the performance of services shall be liable to the plan beneficiary. If the breach was intentional or reckless, the fiduciary shall be liable for an amount up to treble damages for losses sustained as a result of the intentional or reckless conduct.~~

~~(c) Every person who directly or indirectly controls a person liable under this section, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions, every employee of a person so liable who materially aids in the act or transaction constituting the violation, and every agent who materially aids in the act or transaction constituting the violation are also liable jointly and severally with and to the same extent as that person, unless the other person shows that he or she acted in good faith.~~

~~(d) Every person who materially assists in any breach of duty set forth in this section with the intent to deceive or defraud is jointly and severally liable with any other person liable under this section.~~

1 ~~(e) All state and local government retirement systems and state~~
2 ~~and local government employers shall have standing to assert~~
3 ~~claims under this provision on behalf of one or more employees~~
4 ~~or retirees.~~

5 SEC. 2. Chapter 11 (commencing with Section 19999.8) is
6 added to Part 2.6 of Division 5 of Title 2 of the Government
7 Code, to read:

8
9 CHAPTER 11. INVESTMENT PROVIDERS

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11 19999.8. (a) A mandatory defined contribution plan or other
12 mandatory retirement plan established for state and local
13 government employees shall assess each investment provider a
14 fee for the costs associated with administration of the plan,
15 including the cost for a plan beneficiary to open, transfer, or
16 close a mandatory defined contribution plan account or other
17 mandatory retirement plan account. No General Fund moneys
18 shall be used to pay for the administration of the plan or to meet
19 any requirements of the plan.

20 (b) A mandatory defined contribution plan or other mandatory
21 retirement plan established under law for state and local
22 government employees shall offer a plan beneficiary investment
23 education services, including, but not limited to, disseminating
24 educational materials, providing retirement planning education,
25 and offering financial planning guidance on matters such as
26 investment diversification, investment risks, investment costs, and
27 asset allocation. The education services shall include guidance
28 on the appropriate investment portfolio to ensure adequate,
29 stable, and secure retirement benefits based on the plan
30 beneficiary's age, additional years expected to remain in the
31 workforce, risk tolerance, and other relevant factors.

32 19999.81. In order to qualify as an investment provider for a
33 mandatory defined contribution plan or other mandatory
34 retirement plan for state and local government employees, an
35 investment provider shall:

36 (a) Offer investments that have earned positive returns in at
37 least six of the 12 previous quarters.

38 (b) Limit its management and service fees to 1.25 percent of
39 total investments.

40 (c) Provide quarterly statements itemizing all fees charged.

1 19999.82. *In order to qualify as an investment provider for a*
2 *mandatory defined contribution plan or other mandatory*
3 *retirement plan, the investment provider shall provide evidence*
4 *of:*

5 (a) *The investment provider's financial strength and stability.*

6 (b) *Adequate insurance to cover any and all potential liability*
7 *occurring by reason of any act or omission in rendering services*
8 *in connection with a mandatory defined contribution plan or*
9 *other mandatory retirement plan.*

10 19999.83. *An investment provider for a mandatory defined*
11 *contribution plan or other mandatory retirement plan shall*
12 *provide written disclosure of expenses paid directly or indirectly*
13 *by plan beneficiaries, including, but not limited to, penalties for*
14 *early withdrawals, presence of two-tier annuity features,*
15 *declining or fixed withdrawal charges, and surrender or deposit*
16 *charges.*

17 19999.84. (a) *An investment provider for a mandatory*
18 *defined contribution plan or other mandatory retirement plan*
19 *owes fiduciary duties to the plan beneficiary.*

20 (b) *An investment provider who breaches a fiduciary duty in*
21 *connection with the performance of services shall be liable to the*
22 *plan beneficiary. If the breach was intentional or reckless, the*
23 *fiduciary shall be liable for an amount up to treble damages for*
24 *losses sustained as a result of the intentional or reckless conduct.*

25 (c) *For an investment provider, every partner, principal*
26 *executive officer, or corporate director shall be jointly and*
27 *severally liable in the case of a breach of the investment*
28 *provider's fiduciary duty to the same extent as that person who*
29 *materially aids in the act or transaction constituting the*
30 *violation.*

31 (d) *An investment provider who materially assists in any*
32 *breach of duty set forth in this section with the intent to deceive*
33 *or defraud is jointly and severally liable with any other person*
34 *liable under this section.*

35 (e) *All state and local government retirement systems and*
36 *state and local government employers shall have standing to*
37 *assert claims under this provision on behalf of a plan*
38 *beneficiary.*

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